

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID BROWN,

Plaintiff,

v.

Case No. 21-cv-11565

Hon. Matthew F. Leitman

SUSAN MCCAULEY, *et al.*,

Defendants.

**ORDER RESOLVING (1) DEFENDANT DONALD HAIDERER’S OBJECTIONS
(ECF No. 68) TO REPORT AND RECOMMENDATION (ECF No. 66) AND (2)
PENDING MOTIONS FOR SUMMARY JUDGMENT (ECF Nos. 58, 60)**

Plaintiff David Brown is a prisoner currently under the custody of the Michigan Department of Corrections (“MDOC”). In this civil action, Brown alleges, among other things, that he received inadequate medical treatment while he was incarcerated in the Saginaw Correctional Facility (“SCF”) in 2021. He claims that Defendants Donald Haiderer (an optometrist who works at SCF) and Susan McCauley (the Healthcare Unit Manager at SCF) violated his rights under the Eighth Amendment, the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the “ADA”), and the Rehabilitation Act, 29 U.S.C. § 794 *et seq.* (the “RA”). The parties dispute whether Brown’s allegations also include a First Amendment claim of retaliation against Haiderer and McCauley.

On January 26, 2023, Dr. Haiderer moved for summary judgment on Brown’s claims against him. (*See* Haiderer Mot., ECF No. 58.) A day later, McCauley also moved for summary judgment. (*See* McCauley Mot., ECF No. 60.) On March 15, 2023, the

assigned Magistrate Judge entered a Report and Recommendation (the “R & R”), in which she recommended that the Court deny Haiderer’s Motion for Summary Judgment as to Brown’s Eighth Amendment Deliberate Indifference claim and his First Amendment Retaliation claim, but grant the motion as to all other claims against Haiderer. (*See* R & R, ECF No. 66.) She further recommended that the Court grant McCauley’s motion and enter judgment in her favor on all claims against her. (*See id.*) Haiderer filed Objections to the R & R on March 29, 2023. (*See* Obj., ECF No. 68.) Brown has not filed any Objections to the portions of the R & R that are adverse to him.

On July 10, 2023, the Court held a hearing on Haiderer’s Objections to the R & R. For the reasons explained on the record during that hearing, the Court rules as follows:

- Haiderer’s Objections (ECF No. 68) are **OVERRULED IN PART** and **SUSTAINED IN PART**. The Objections are **OVERRULED** to the extent that Haiderer objects to the recommendation that the Court deny his motion for summary judgment on Brown’s Eighth Amendment claim. That portion of Haiderer’s motion (ECF No. 58) is **DENIED WITHOUT PREJUDICE** to Haiderer’s ability to renew the motion following settlement efforts. The Objections are **SUSTAINED** to the extent that Haiderer contends that he has not waived his right to challenge Brown’s First Amendment retaliation claim (and/or to argue that Brown has not brought such a claim). Haiderer may move for summary judgment on the First Amendment retaliation claim (and may argue in that motion that Brown has not brought such a claim) following settlement efforts.

- Defendant Haiderer's Motion for Summary Judgment (ECF No. 58) is **GRANTED** to the extent that Dr. Haiderer seeks judgment in his favor on Brown's claims under the ADA and the RA. Brown did not file any objections to the recommendation in the R & R that judgment be entered against Brown on these claims, and the Court has no duty to conduct an independent review of the portions of the R & R to which the parties did not object. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985).

As further explained on the record, Defendant McCauley's Motion for Summary Judgment (ECF No. 60) is **GRANTED**.

Finally, for the reasons discussed on the record, the Court will appoint counsel for the limited purpose of representing and advising Brown in settlement negotiations. If those settlement efforts are unsuccessful, Dr. Haiderer will be permitted to file a renewed motion for summary judgment as described above.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: July 12, 2023

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 12, 2023, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
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